IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 21ST MARCH 2007 / 30TH PHALGUNA 1928

OP.No. 3298 of 2000(P)

PETITIONER:

KAILAS GUPTA (PROP)
M/S.KAMAL PIPES
ERNAKULAM.

BY ADV. SRI.K.K.VIJAYARAGHAVAN
SRI.DEEPSUR D.JAYAN

RESPONDENTS:
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1. **THE ASST.COMMISSIONER (ASSMT),**
   DEPT. OF COMMERCIAL TAXES,
   SPL. CIRCLE-1, ERNAKULAM.

2. **THE COMMISSIONER OF**
   COMMERCIAL TAXES,
   THIRUVANANTHAPURAM.

3. **THE DEPUTY TAHASILDAR (RR),**
   KANAYANUR TALUK,
   ERNAKULAM.

BY GOVERNMENT PLEADER SRI.C.K.GOVINDAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 21/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P NO.3298/2000

ORDER IN CMP NO. 5498/2000 IN OP NO.3298 OF 2000

DISMISSED

21/3/07 **SD/-ANTONY DOMINIC, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF NOTICE NO.23030696/94-95 DTD. 3.6.99 ISSUED BY 1ST RESPONDENT.

EXT.P2: TRUE COPY OF APPELLATE ORDER NO.STA 961/98 DTD. 28.9.99 ISSUED BY DEPUTY COMMISSIONER.

EXT.P3: TRUE COPY OF REVISION ORDER NO.STRP 183/99 DTD. 29.11.99 ISSUED BY DEPUTY COMMISSIONER.

EXT.P4: TRUE COPY OF DEMAND NOTICE NO.E2 ST/89099-2000 ISSUED BY THE 3RD RESPONDENT.

//TRUE COPY//

ANTONY DOMINIC, J.
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O.P NO. 3298 OF 2000
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Dated this the 21st day of March, 2007

J U D G M E N T

The prayer sought for by the petitioner is to declare that the petitioner is not liable to be levied penal interest in terms of the provisions contained in Section 23(3) of the Kerala General Sales Tax Act. The issue pertains to the assessment year 1994-95 and by Ext.P1, penal interest of Rs.5,37,221/- was proposed to be levied on the petitioner and he was called upon to pay the same. The petitioner pursued the matter in revision and by Ext.P3, the Deputy Commissioner of Commercial Taxes, rejected the revision and confirmed the levy of penal interest following the Division Bench judgment of this Court reversing the judgment of the learned Single Judge in **Maruthi Wire Industries Pvt. Ltd, v. Sales Tax Officer, First Circle Mattanchery & Others (1996 STC 157)**. It is challenging Ext.P3 that this original petition has been filed at a time when revenue recovery proceedings were initiated against the petitioner.

2. It is seen that during the pendency of this original petition, the Supreme Court has by its judgment in **Maruthi Wire**

Industries Pvt. Ltd, v. Sales Tax Officer, First Circle Mattanchery & Others (122 STC 410), reversed the Division Bench judgment and restored the judgment of the learned Single Judge. Thus, the law as laid down by the learned Single Judge requiring that self assessment or a regular assessment is necessary for levy of penal interest stands restored. In this case, as assessment was not completed at the time when penal interest was levied, Exhibits P1 and P3 cannot be sustained.

For the aforesaid reason, Ext.P1 and P3 will stand quashed and the Original petition will stand allowed. No costs.

ANTONY DOMINIC, JUDGE.

Rp